

Carol G. Unruh, #102929
LAW OFFICES OF CAROL G. UNRUH
3000 S. Robertson Blvd., Suite 215
Los Angeles, CA 90034
Tel (310) 842-9660, Fax (310) 842-9664
cgunruh@sbcglobal.net

Attorney for Defendants

FILED & ENTERED

JAN 14 2015

CLERK U.S. BANKRUPTCY COURT
Central District of California
BY tatum DEPUTY CLERK

CHANGES MADE BY COURT

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION**

In re

AVIS RICHELLE COPELIN,

Debtor

AVIS RICHELLE COPELIN,

Plaintiff

vs.

GREAT WESTERN CAPITAL, LLC,
AMBER INVESTMENTS GROUP, INC.,
NARA INVESTMENTS GROUP, LLC,
U.S. BANK, N.A., AS TRUSTEE
FOR THE FIRST FRANKLIN MORT-
GAGE PASS THROUGH CERTIFICATE
SERIES 2005-FF10, SELECT
PORTFOLIO SERVICING, INC.,
BANK OF AMERICA, N.A., DOES 1
TO 20,

Defendant(s)

Chapter 11

Case No. 2:13-bk-32580 RK
Adv. No. 2:14-ap-01250 RK

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

Date: 11/05/14
Time: 1:30 P.M.
Ctrm: 1675 Roybal Bldg.

After consideration of the papers in support of and in
opposition, if any, to Defendants' Motion For Summary Judgment and
oral argument, if any, the court determines that the following
facts have been established as:

UNCONTROVERTED FACTS

1.
On August 30, 2005, Plaintiff herein, Avis Richele Copelin, executed a promissory note in the amount of \$1,200,000.00 secured by a first deed of trust in favor of lender First Franklin regarding that certain real property located at 4629 Talofa Ave., Toluca Lake, CA 91602. APN 2420-020-011 ("the property"). The deed of trust was recorded on September 2, 2005 in the Office of the Recorder of Los Angeles County as recording number 05-2125528.

[Defendants' Request For Judicial Notice, Exhibit 1].

2.
On August 30, 2005, Plaintiff herein, Avis Richelle Copelin, executed a promissory note in the amount of \$300,000.00 secured by a second deed of trust in favor of First Franklin regarding the property. The deed of trust was recorded on September 2, 2005 in the Office of the Recorder of Los Angeles County as recording number 05 2125529.

[Defendants' Request For Judicial Notice, Exhibit 2].

3.
On March 27, 2007, Plaintiff herein, Avis Richelle Copelin executed a grant deed transferring her interest in the property to Holy Nation Entertainment, Inc. The grant deed was recorded on December 10, 2007 in the Office of the Recorder of Los Angeles County as recording number 20072705526.

[Defendants' Request For Judicial Notice, Exhibit 3].

4.
On September 15, 2008, Plaintiff herein, Avis Richelle Copelin, executed a grant deed transferring her interest in the property to Armen Hovhannisian. The grant deed was recorded on

1 September 18, 2008 in the Office of the Recorder of Los Angeles
2 County as recording number 20081687049.

3 [Defendants' Request For Judicial Notice, Exhibit 4].

4 5. On December 22, 2008, the beneficiary of the promissory note
5 and second deed of trust on the property exercised the power of
6 sale contained therein and conducted a foreclosure sale. The
7 purchaser of the property was Siboney A. Monge, Trustee to the
8 Talofa 4629 Trust. A Trustee's Deed Upon Sale was recorded on
9 December 24, 2008 in the Office of the Recorder of Los Angeles
10 County as recording number 20082254894.

11 [Defendants' Request For Judicial Notice, Exhibit 5].

12 6. On May 7, 2009 Siboney Monge conveyed an interest in the
13 property to Alvina Hiznay. A Grant Deed was recorded on May 22,
14 2009 in the Office of the Recorder of Los Angeles County as
15 recording number 20090767420.

16 [Defendants' Request For Judicial Notice, Exhibit 6].

17 7. On December 11, 2009, Alvina Hiznay executed a deed of trust
18 regarding the property in favor of Nicklaus Seward and Marina
19 Avetisyan. This junior deed of trust was recorded on December 16,
20 2009 in the Office of the Recorder of Los Angeles County as
21 recording number 20091911259.

22 [Defendants' Request For Judicial Notice, Exhibit 7].

23 8. On July 7, 2010, the beneficiaries of the junior deed of
24 trust conducted a foreclosure sale of the property. Title to the
25 property was conveyed to beneficiaries Nicklaus Seward and Marina
26 Avetisyan. A Trustee's Deed upon Sale was recorded on July 12,
27 2010 in the Office of the Recorder of Los Angeles County as
28 recording number 20100943787.

[Defendants' Request For Judicial Notice, Exhibit 8].

9. On April 18, 2011, the Superior Court Of California, County Of Los Angeles entered a judgment in case number EC049804 (c/w BC421897) declaring US Bank to be the beneficiary of the first deed of trust on the property. The judgment also declared a purported reconveyance of the deed of trust to Avis Copelin to be a forgery, null and void, of no effect and ordered it to be expunged from the records of the County Recorder's Office. This judgment was recorded on April 20, 2011 in the Office of the Recorder of Los Angeles County as recording number 20110572273.

[Defendants' Request For Judicial Notice, Exhibit 9].

10. On August 12, 2013, US bank, the beneficiary under the promissory note and first deed of trust on the property, exercised the power of sale contained therein and conducted a foreclosure. The purchasers of the property were Great Western Capital, LLC (40%), Amber Investments Group, Inc. (30%), and NARA Investments Group, LLC (30%). A Trustee's Deed upon Sale was recorded on August 15, 2013 in the Office of the Recorder of Los Angeles County as recording number 20131201002.

[Defendants' Request For Judicial Notice, Exhibit 10].

Based on the foregoing uncontroverted facts, the Court now makes its

CONCLUSIONS OF LAW

1. On August 12, 2013, Plaintiff herein, Avis Richelle Copelin, did not have an ownership interest in the real property located at 4629 Talofa Ave., Toluca Lake, CA 91602, APN 2420-020-011.

2. At the time of the August 12, 2013 foreclosure sale, US

1 Bank was the beneficiary of the first deed of trust executed by
2 Plaintiff herein, Avis Richelle Copelin, on August 30, 2005 and
3 recorded on September 2, 2005.

4 3. In this adversary proceeding, Debtor has asserted claims
5 for relief with respect to a certain parcel of real property
6 located in California in which she claimed an interest. At some
7 point in time, debtor had acquired title to such parcel of real
8 property by taking out a loan and executing a promissory note and
9 a deed of trust in favor of the lender with respect to such loan.
10 Debtor's claims are against parties to foreclosure sales relating
11 to this property, including prior lenders, assignees of the deed
12 of trust and purchasers of the property. The gravamen of
13 Debtor's claims against these parties is that they are liable to
14 her for wrongful foreclosure because they have no rights,
15 ownership or claim to the properties and that any attempted
16 foreclosure of the deeds of trust was illegal or fraudulent
17 because they are claiming through parties which did not hold the
18 original "wet ink signature" promissory note. *In re Preston*, 931
19 F. Supp. 2d 743 (N.D. Tex. 2013). Debtor's claims are based on
20 what is known as the "show me the note" theory. *Id.* at 756. In
21 this regard, Debtor principally relies upon *Carpenter v. Longan*,
22 83 U.S. 271 (1872) for the proposition that "the note and
23 mortgage are inseparable; the former as essential, the latter as
24 an incident. An assignment of the note carries the mortgage with
25 it, while an assignment of the mortgage alone is a nullity." See
26 ECF 106, Debtor's Opposition to Motion to Dismiss, filed on
27 October 6, 2014, at 6-7. Thus, according to Debtor, based on
28 assignments of the deed of trust without authenticated

1 | endorsements of the promissory note, the foreclosing party, U.S.
2 | Bank, an assignee of the trust deed, lacked authority to
3 | foreclose on the property pursuant to the trust deed in a
4 | nonjudicial foreclosure sale, and the purchasers at the
5 | nonjudicial foreclosure sale thus did not validly purchase the
6 | property. *Id.* In other words, assignment of the trust deed
7 | (i.e., mortgage) alone without the note is a nullity based on
8 | *Carpenter v. Longan*. However, while *Carpenter v. Longan* is a
9 | decision of the United States Supreme Court, it is not
10 | dispositive of otherwise constitutional state property laws. *In*
11 | *re Preston*, 931 F.Supp.2d at 759, *citing inter alia*, *Grayned v.*
12 | *City of Rockford*, 408 U.S. 104, 110 (1972) ("[I]t is not within
13 | our power to construe and narrow state laws."). As noted in
14 | *Preston*, the Supreme Court in *Carpenter v. Longan* was not
15 | construing Texas property law regarding nonjudicial foreclosure
16 | similar to California property law here; rather, it was applying
17 | Colorado territorial or federal common law. *Id.* Similarly,
18 | *Carpenter* is not controlling here and does not override
19 | California property law regarding nonjudicial foreclosure, which
20 | permits a party to foreclose based solely on its status as an
21 | assignee of a lender's rights under a deed of trust, without
22 | regard to who holds the borrower's promissory note. California
23 | Civil Code, § 2924 *et al.*; *Debrunner v. Deutsche Bank National*
24 | *Trust Co.*, 204 Cal.App.4th 433, 439-442 (2012); *In re Rivera*, 2014
25 | WL 6675693 at *7 (9th Cir. BAP 2014).

26 | 4. Under California law, for the purposes of a non-
27 | judicial foreclosure, a party may foreclose based solely on its
28 | status as an assignee of the lender's rights under the deed of

1 trust without regard to who holds the borrower's note. See *Siliga*
2 *v. Mortg. Electr. Registration System, Inc.*, 219 Cal.App.4th 75,
3 84 n.5 (2013); *Jenkins v. JP Morgan Chase Bank, N.A.*, 216
4 Cal.App.4th 497, 512-13 (2013); *Debrunner v. Deutsche Bank Nat.*
5 *Trust Co.*, 204 Cal. App. 4th 433, 439, 138 Cal. Rptr. 3d 830, 834
6 (2012)

7 5. Defendants herein Great Western Capital, LLC, Amber
8 Investments Group, Inc., and NARA Investments Group, LLC were
9 bona fide purchasers of the real property located at 4629 Talofa
10 Ave., Toluca Lake, CA 91602, APN 2420-020-011 at the foreclosure
11 sale conducted on August 12, 2013.

12 6. Upon the recording of the Trustee's Deed upon Sale on
13 August 15, 2013, there arose a conclusive presumption that
14 defendants herein Great Western Capital, LLC, Amber Investments
15 Group, Inc., and NARA Investments Group, LLC were the owners of
16 the real property located at 4629 Talofa Ave., Toluca Lake, CA
17 91602, APN 2420-020-011.

18 7. The foreclosure sale conducted on August 12, 2013
19 regarding the property located at 4629 Talofa Ave., Toluca Lake,
20 CA 91602, APN 2420-020-011 and the recording of the Trustee's
21 Deed upon Sale on August 15, 2013 did not slander title of
22 Plaintiff herein, Avis Richelle Copelin, to that real property.

23 8. The foreclosure sale conducted on August 12, 2013
24 regarding the real property located at 4629 Talofa Ave., Toluca
25 Lake, CA 91602, APN 2420-020-011 and the recording of the
26 Trustee's Deed upon Sale on August 15, 2013 did not constitute an
27 unfair business practice or unfair competition pursuant to
28 California Business & Professions Code Section 17200, et seq.

1 (California's Unfair Competition Law), or any other statute.

2 9. Plaintiff herein, Avis Richelle Copelin, has not
3 tendered payment or alleged tender of payment of the underlying
4 debt secured by the deed of trust in favor of US Bank. *In re*
5 *Mortgage Electronic Registration Systems, Inc.*, 754 F.3d 772,
6 784-786 (9th Cir. 2014).

7 10. Plaintiff herein, Avis Richelle Copelin, has not
8 offered sufficient evidence in support of her claim for slander
9 of title.

10 11. Plaintiff herein, Avis Richelle Copelin, has not
11 offered sufficient evidence in support of her claim for quiet
12 title.

13 12. Plaintiff herein, Avis Richelle Copelin, has not
14 offered sufficient evidence in support of her claim for unfair
15 business practice or unfair competition pursuant to California
16 Business & Professions Code Section 17200, et seq. (California's
17 Unfair Competition law), or any other statute.

18 Judgment shall be entered in Defendants' favor consistent
19 herewith.

20 IT IS SO ORDERED.

21 ###

22 

23
24 Date: January 14, 2015

25 Robert Kwan
26 United States Bankruptcy Judge
27
28